

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. ALABAMA

UNITED STATES OF AMERICA

-v-

ERIC ROBERT RUDOLPH

)
)
) CR 00-S-422-S
)
)

**RESPONSE OF THE UNITED STATES TO DEFENDANT'S REQUEST
FOR NOTICE OF GOVERNMENT'S INTENT
TO USE EVIDENCE**

Comes Now the United States of America by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama and Michael W. Whisonant, William R. Chambers, Jr., Robert J. McLean, Assistant United States Attorneys, and respond to Defendant's Request for Notice of Government's Intent to Use Evidence pursuant to Fed. R. Crim. P. 12(b)(4)(B) filed on March 15, 2004. In support of this Response, undersigned counsel submit the following:

1. Rule 12(b)(4)(B) states that "the defendant may...request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16." Fed. R. Crim. P. 12. Rule 12(b)(4)(B) provides a mechanism for insuring that a defendant knows of the government's intention to use evidence to which the defendant may want to object. See id., advisory committee note. Although the defendant is entitled to discovery of such evidence under Rule 16, Rule 12(b)(4)(B) makes it possible for the defendant to avoid the necessity of moving to suppress evidence which the government does not intend to use. Id. The rule also assists the defendant in fulfilling his Rule 12(b)(3) obligation to make suppression motions before trial. United States v. de la Cruz-

Paulino, 61 F.3d 986, 994 (1st Cir. 1995).

2. The following evidence was obtained through the execution of search warrants and is available to defendant pursuant to Fed. R. Crim. P. 12. Rule 12(b)(4)(B). At the time of this filing, the government anticipates presenting the following evidence, discoverable under Rule 16, in its case-in-chief at trial:

- a. All evidence seized as a result of the execution of the first search warrant for the Cane Creek Road residence (Warrant 2:98M09, executed February 4, 1998);
- b. All evidence seized as a result of the execution of the search warrants for Cal's Mini Storage Unit 91 (Warrant 2:89M08, executed on February 2, 1998; Warrant 2:98M10, executed February 5, 1998; and Warrant 2:98M21, executed March 6, 1998);
- c. All evidence seized as a result of the execution of the search warrant for the defendant's Grey 1989 Nissan pickup truck, North Carolina license number KND-1117, (Warrant 2:98M12, executed February 9, 1998);
- d. All statements made by defendant upon his arrest on May 31, 2003;


3. Access to the evidence listed in paragraph 2 is available to, has been or will be provided to defense counsel.

4. Other materials have been provided to the defense in discovery pursuant to Fed. R. Crim. P. 16. The above information referred to in paragraph 2 was obtained through search warrants and may be the object of a motion to suppress by defendant pursuant to Fed. R. Crim. P. 12(b)(3)(C). The defense has been provided with all search warrants, affidavits, returns, and

inventories of items seized. Said items seized have been available for inspection and continue to be available for inspection. If the government decides to use additional materials in its case-in-chief at trial that are discoverable under Rule 16 and obtained through execution of search warrants but not listed in paragraph 2 above, the government will provide defense counsel and the court with prompt notice of its intent to use such evidence, as would be anticipated by Rule 12(b)(4)(B).

Respectfully submitted this the 9th day of April, 2004.


ALICE H. MARTIN
United States Attorney



MICHAEL W. WHISONANT
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date by First Class, United States mail, postage prepaid, to his attorneys of record: Mr. Richard Jaffee, Ms. Judy Clark, Mr. Michael Burt care of Jaffee, Strickland & Drennan, 2320 Arlington Avenue, Birmingham, Alabama 35205; Mr. William Bowen, White, Dunn & booker, 2025 3rd Avenue North, Suite 600, Birmingham, Alabama 35203; and Mr. Emory Anthony, 2015 1st Avenue North, Birmingham, Alabama 35203.



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